

REMARKS

Applicants respectfully request reconsideration of the present application in view of the foregoing amendments and in view of the reasons which follow.

Claims 20, 22, 27, 28, 33, and 39-43 are amended presently. Claims 1-19, 21, 29, and 37 are cancelled. New Claims 44-47 are added.

Applicant requests that the examiner enter these amendments and new claims because no new matter has been added. Support for the amendments to the claims can be found in the specification, in, e.g., Figs. 1-3; 13A-13D; 16A-17D; 40; and 49.

The Examiner is thanked for the brief telephone interview of Feb. 20, 2009, in which the indefiniteness of the “width to height” comparison in claim 20 was discussed, as well as potential solutions for overcoming that problem.

With the foregoing amendments claims 20, 22-28, 30-36, and 38-42 are pending in this application.

Rejection under 35 USC § 112, second paragraph

Claims 20, 22-28, 30-36, and 38-43 are rejected under 35 USC § 112, second paragraph, as being indefinite. Claim 20 was amended to eliminate the term “greatly” from the phrase “a width greatly exceeding a height”, thereby making that phrase clear and definite. As per claims 20, 27, 40-43, the term “said” was incorporated where appropriate to clearly indicate the presence of an antecedent for various elements. In general, Applicants submit that it is clear to refer to “each said element” after establishing “at least one element”, as it is clear what is meant by “each” whether, e.g., one or twenty such elements is actually present. Additionally, Applicants submit that in claim 43 it is proper to refer specifically to “each said sleeve panel”, as there is antecedent basis for such. Applicants submit that claims 20, 22-28, 30-36, and 38-43, in their current form, are definite and in allowable form.

Rejection under 35 USC § 102(b) and 35 USC § 103(a)

Claims 20-26, 40, 41, and 43 are finally rejected under 35 USC §102(b) as being

anticipated by photographs of a Lindt & Springli chocolate package (hereinafter referred to as the “Lindt” reference). Claims 20, 22, 27, 28, 30-36, 38, 39, 41, and 42 are rejected under 35 USC §102(b) as being anticipated by GB 2,349,143 to Brain or, in the alternative, under 35 USC §103(a) as obvious over Brain in view of Bouche (US 5,005,759) or Landor (DE 1536131). Claims 23-26, 40, and 43 are rejected under 35 USC §103(a) as being obvious over the references as applied to claim 20 above, and further in view of Lindt. Applicants submit that claims 21, 29, and 37 are cancelled and that pending claims 20, 22-28, and 30-36 are in condition for allowance over the above-cited references, taken alone or in combination with any other cited reference.

Claim 20 shows that the end cap defines at least a pair of discrete channels therein and that each channel receives at least one locking tab therein.

Claim 43 covers a sleeve including a pair of opposed resilient locking tabs and an end cap defining a pair of channels therein.

The Lindt reference teaches a package sleeve with a plurality of locking tabs and a pair of end caps. However, each of the end caps provide for only a single circumferential receiving channel. As such, Applicants submit that claims 20 and 43, teaching a pair of channels (at least), define over the Lindt chocolate package.

The Brain reference provides a package sleeve with a plurality of locking tabs and at least one end cap. However, this reference, like the Lindt reference, only provides for a single continuous receiving channel in the illustrated end cap thereof. As such, Applicants submit that claims 20 and 43 define over Brain.

It is noted that, per the package of claims 20 and 43, there are advantages gained by employing multiple distinct channels for receiving at least one locking tab therein (e.g., WO 2004/018301, p. 5). Such channel/tab combinations can be designed to provide a releasable locking mechanism that permits an end cap to be twisted off. Alternatively, such a combination can be configured to be non-releasable. However, the ability to design for a releasable connection is not an available option when a single circumferential channel is employed (as noted, for example, in the first full paragraph on p. 11 of WO ‘301).

The Bouche reference does not satisfy the shortcomings of the teachings in Brain or Lindt. Bouche discloses a snap-lock box with locking lugs projecting from an end cap

thereof and with slots formed in tabs extending from box sleeve. A given lug is able to engage a corresponding slot to produce a snap-lock. It is important, however, to note that Bouche does not provide

the engagement of a tab with a ledge in the manner of claims 20 or 43, nor does Bouche disclose any channels formed in a manner consistent with Lindt, Brain, or claims 20 or 43. Furthermore, Bouche does not provide any indication as to how the single channel of Lindt or Brain could be replaced with at least a pair of distinct channels. Particularly, the slots in the tabs of Bouche have an entirely different construction than a given channel of Lindt or Brain, and such slots interact differently with the lugs of Bouche than does a channel of Lindt or Brain with a given tab thereof. Accordingly, Bouche fails to provide sufficient guidance as to how or why to convert a single channel, as per Lindt or Brain into a pair or more of such channels. Therefore, Bouche fails to overcome the shortcomings of Lindt or Brain, with respect to the subject matter of claims 20 or 43.

The Landor reference also does not satisfy the shortcomings of the Brain reference. Landor discloses a sleeve with multiple tabs formed at a given end thereof and a cap with a single channel for receiving such tabs. Thus, Landor has a similar shortcoming as Lindt and Brain, in that it clearly discloses only one channel per cap and accordingly, does not render obvious the subject matter of claims 20 or 43.

Applicants submit that claims 20 and 43 are now in condition for allowance over Lindt, Brain, Bouche, Landor, or any of the other cited references, taken alone or in combination. Applicants submit that claims 22-28, 30-36, and 38-42, based on their dependency upon allowable claim 20, are also in condition for allowance.

Obvious-type double patenting

Claims 20, 22-28, 30-36, and 38-43 are rejected under the judicially created doctrine of obviousness-type double patenting over claims 1-6 of US 7,700,775 in view of Bouche, Landor, or Lindt.

Applicant submits herewith an appropriate Terminal Disclaimer to overcome this obvious-type double patenting rejection. As such, claims 20, 22-28, 30-36, and 38-43 are now in condition for allowance.

New claims

Claims 44-47 are added hereby. Support for such changes may be found, for example, in Figs. 1-3; 13A-13D; 16A-17D; 40; and 49. It is noted that claim 44 covers a sleeve including at least a pair of resilient locking tabs and an end cap defining at least a pair of discrete channels therein. Applicants submit that none of the cited references, taken alone or in combination, anticipate or render obvious the subject matter of claim 44. Applicants further submit that claims 45-47 are allowable based upon their dependence on allowable claim 44. Further, Applicants submit that the subject matter of claim 45 is allowable based upon its own merits, as it covers that each channel either is rectangular in shape or further defines at least one side having the form of a ramp.

Conclusion

Applicants believe that the present application is in condition for allowance. Favorable consideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

If any fees are due in connection with the filing of this Amendment, please charge the fees to 132512. As a fee is required for an extension of time under CFR § 1.136, as noted above, such an extension is requested and the fee should also be charged to our Deposit Account. It is also noted that a fee for one excess dependent claim should be charged to such account as well.

Respectfully submitted,

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